

The opinion in support of the decision being entered
today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BAIJU V. PATEL and URI ELZUR

Appeal 2007-1291
Application 09/364,835
Technology Center 2100

Decided: July 31, 2007

Before JAMES D. THOMAS, ANITA PELLMAN GROSS, and
JAY P. LUCAS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1 through 5, 13 through 20, and 28
through 37. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a).

As best representative of the disclosed and claimed invention,
independent claim 1 is reproduced below:

1. A method for use in a device coupled to a communications channel, comprising:

determining a security service to perform with a data block;

generating security information to pass along with the data block, the security information identifying the security service;

using a computer peripheral device adapted to control communication with the communications channel to select the security service from other security services based on the security information; and

processing, in the computer peripheral device, the data block according to the security information.

The following references are relied upon by the Examiner:

Abadi	US 5,268,962	Dec. 7, 1993
Caputo	US 5,546,463	Aug. 13, 1996

Claims 1 through 5, 16 through 20, and 28 through 37 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Caputo. Separately, claims 13 through 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Abadi.

Rather than repeat the positions of the Appellants and the Examiner, reference is made to the Brief and the Reply Brief for Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

We affirm-in-part.

For purposes of minimizing the discussion with respect to independent claims 1, 16, 28, and 33, which are rejected in the first stated rejection relying upon Caputo, we note that only independent claims 1 and

16 require respectively a computer peripheral device to select the security service from other security services based upon claimed security information in claim 1 and correspondingly a cryptographic engine to perform the same function in claim 16. There is no specific, corresponding recitation of selection in independent claims 28 and 33, although this feature appears to be required in other words. Instead, these latter two claims recite the requirement of identifying at least one of an encryption algorithm and an authentication algorithm to be performed by a respective security device in claim 28 or the receiving circuit of a controller in claim 33.

Essentially, we agree with Appellants' views expressed in the Brief and Reply Brief that Caputo does not teach or otherwise indicate to the artisan within 35 U.S.C. § 102 that the claimed selection or identification occurs among the features recited in independent claims 1, 16, 28, and 33. In Caputo, the discussion at column 5, line 16 through column 6, line 45 and the corresponding discussion beginning at column 8, line 40 do not clearly indicate to us that Caputo teaches that any device within his teachings performs the selection or identification functionalities required of these independent claims on appeal. The discussion in Caputo and these noted portions of this reference indicate to us that there are a plurality of known encryption algorithms in the prior art from which the user or designer of Caputo's system may select for use in his system. There is among these teachings however no clear statement that it is any device or element of Caputo's invention that performs the selection or identification functionality. The clear inference to the reader is that it is the user or designer of the encrypting/authenticating device 10 in the various figures that performs the selection rather than the device itself. Thus, the reader is left with the

impression that the designer of the actual device selects from among a plurality of available optional encryption algorithms which one to use and that the system may then function according to that preselection by the user. The discussion beginning at column 8, line 40 leaves the reader with the same impression.

It would be improper for us to speculate among the teachings in Caputo that the reference clearly and unambiguously indicates to the artisan that the device 10 in Caputo performs any selection among well known prior art algorithms.

Since we reverse the rejection of independent claims 1, 16, 28, and 33, we likewise reverse the rejection of their respective dependent claims.

Turning lastly to the separate rejection of claims 13 through 15 as being anticipated by Abadi, we sustain this rejection for the reasons set forth by the Examiner in the Answer.

Appellants' position set forth at pages 15 and 16 of the principal Brief on appeal as to independent claim 13 focuses upon the alleged deficiencies of Abadi as to teaching the determining and processing features in the last two clauses of independent claim 13 on appeal. The Examiner directly addresses these arguments with respect to what appears to be a restatement of the rejection in a much more expansive position statement set forth by the Examiner at pages 17 through 20 of the Answer. These remarks of the Examiner are persuasive of the unpatentability of the subject matter of independent claim 13.

According to Appellants' arguments at page 4 of the Reply Brief, the issue from Appellants' perspective focuses upon the claim requirement that the determination and processing features be performed by a computer

peripheral device rather than what Appellants perceive as the Examiner's view that merely a computer performs this function in Abadi. The Examiner's original position at page 12 of the Answer makes clear to the reader that the network controller 116 is considered to be the claimed computer peripheral device. Indeed, this is the case. Abadi's prior art system among various host computers in prior art Figure 1 is improved upon by the use of the network controller 116 in Figure 3, labeled as the first embodiment in Abadi, and the additional embodiment at Figure 6 for the network controller 316. Figure 4 identifies the data packet 130 which includes the BQI or Buffer Queue Index which indicates by its presence or absence whether a security service is in the data block or packet itself. Corresponding data packet structures 130 are shown in Figure 7 for the second embodiment in Figure 6. Significantly, as to both embodiments in Figures 3 and 6 in Abadi, the flowchart Figures 5A, 5B, and Figure 8 respectively make clear that it's the host computer's network controller that performs the functions of decrypting and encrypting etc. according to the functionality of the data packets. Therefore, when taken as a whole, Appellants' arguments urging patentability as to independent claim 13 are clearly unpersuasive based upon this expanded view of Abadi's teachings.

Appellants' separate arguments as to independent claim 13's dependent claim 14 at page 16 of the principal Brief on appeal are separately addressed by the Examiner according to more expansive positions set forth at pages 20 and 21 of the Answer. These additional positions of the Examiner are not addressed in the Reply Brief. Therefore, based upon the persuasiveness of the Examiner's positions as to claim 14, we find that it too

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is anticipated by Abadi. No separate arguments are presented as to dependent claim 15 in the Brief and Reply Brief.

In view of the foregoing, we have reversed the Examiner's rejection of claims 1 through 5, 16 through 20, and 28 through 37 under 35 U.S.C. § 102. On the other hand, we have affirmed the rejection of claims 13 through 15 under 35 U.S.C. § 102. Therefore, the decision of the Examiner rejecting all the claims on appeal under 35 U.S.C. § 102 is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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